House of Raeford Farms, Inc. *and* United Food and Commercial Workers International Union, AFL–CIO, CLC, and United Food and Commercial Workers International Union, Local 204 Union No. 46. Case 11–CA–16407

March 16, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS LIEBMAN AND BRAME

On July 9, 1997, Administrative Law Judge George Carson II issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified below and to adopt the recommended Order.

The General Counsel has excepted to the judge's finding that the employees were not engaged in concerted activity. Assuming, *arguendo*, that the employees were acting in concert, we nevertheless agree with the judge's dismissal of the complaint.[1] As the judge found, the facts in this case show no more than that the employees were motivated by a desire to start the Thanksgiving holiday early. Thus, the General Counsel has not met his burden of showing that the employees were engaged in protected activity, such as protesting mandatory holiday overtime.[2] The record simply does not support a finding that the employees were doing anything other than attempting to determine unilaterally their terms and conditions of employment, conduct which is not protected by the Act. As the Board said in *Scioto Coca-Cola Bottling Co.*, 251 NLRB 766 (1980), ''there must be some evidence on the record from whatever source that the activity engaged in was not only concerted but, more significantly, that it was . . . protected by Section 7 of the Act.'' Id. at 766. As the judge found, we have no such evidence here.

[1] Member Brame agrees with the judge's discussion of the alleged concerted nature of the employees' activities.

[2] By this statement, we do not agree with the judge's suggestion that an explicit demand made upon the employer is a necessary prerequisite to a finding of protected activity. See, e.g., *McEver Engineering, Inc.*, 275 NLRB 921, 925–926 (1985). We do agree with the judge, however, that there is insufficient evidence to support a finding that the employees were acting to protest mandatory overtime or any other term or condition of employment.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Joseph T. Welch and *Lisa Shearin, Esqs.*, for the General Counsel.
Charles P. Roberts III, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in Raeford, North Carolina, on May 12 and 13, 1997. The charge was filed on February 7, 1994,[1] and the complaint was issued August 29, 1995.[2] The complaint alleges that Respondent terminated seven employees because they engaged in protected concerted activity, in violation of Section 8(a)(1) of the National Labor Relations Act. Respondent's timely answer denies any violation of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, is engaged in the processing and sale of poultry products at its facility in Raeford, North Carolina, where it annually purchases and receives goods and material valued in excess of $50,000 directly from points outside the State of North Carolina. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent admits, and I find and conclude, that United Food and Commercial Workers International Union, AFL–CIO, CLC, with its Local 204, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Respondent, in addition to the processing and sale of fresh poultry, primarily turkeys, also sells processed poultry products. These products are first cooked, after which they are cooled and then packaged, boxed, and shipped. After the employees responsible for cooking the meat have completed their task, the further processing department employees who are responsible for packaging the meat must perform their job to assure that the meat does not spoil. Before being packaged, the meat must be cooled. The cooling is done in a special refrigeration unit that the employees call the ''blast.'' Cooling usually takes about 2 hours.

[1] All dates are 1994 unless otherwise indicated.

[2] The complaint, as issued, was a consolidated complaint. Prior to the opening of the hearing the parties settled Cases 11–CA–16237 and 11–CA–16622. Those cases are no longer before me. The caption herein reflects the only case before me, Case 11–CA–16407.

It is undisputed that the packaging and boxing employees often work more than an 8-hour shift. This generally occurs before weekends or extended holidays. The requirement that they do so was explained by employee Linda Mainor: ''[W]e always had to stay and do everything [in] the cooler before we get out for the holiday.'' Whether Respondent's requirement is considered to be a prescribed workday in excess of 8 hours or mandatory overtime is immaterial. Employees in this department knew that, when the first shift was not going to be reporting the next day, they were required to work until the work was done.

Employees were also aware that they were not permitted to leave work without permission. Respondent's employee guide book contains a list of offenses that may result in discharge, one of which is the leaving of the employee's work station without permission. Documentary and testimonial evidence establishes that employees who leave the plant without permission are considered to have voluntarily quit. If they seek to return to work, they are advised that they have been terminated.[3]

In November, Director of Personnel Erick Wowra heard about a rumor in the plant that employees could not be required to work over 8 hours. The source of the rumor was never established, although one supervisor attributed it to the Union.[4] In response to the rumor, Wowra obtained a document that explained the Fair Labor Standards Act in layman's terms. He copied, and had posted, a page from that document which concludes with the following statement:

> In fact, there is no statutory limit on the number of hours a person over age 16 may be required to work.[5]

On the early morning of November 24, Thanksgiving Day, eight employees in the further processing department clocked out shortly after 1 a.m. Seven of them did not have permission to do so. When they returned on Monday, November 28, the seven were advised that Respondent considered them to have voluntarily quit.

The complaint alleges, and the answer denies, that lead person Laura Crawford was a statutory supervisor. I need not determine whether she was a statutory supervisor since I find that she did not have authority to permit employees to leave the plant. Her authority was limited to giving permission to go to the restroom or take a break. Thus, even if she were a statutory supervisor, she credibly testified that when employees sought permission to leave, she referred them to acknowledged Supervisor Maggie Farmer.

B. *Facts*

On November 23, second shift began at 4 p.m. the further processing employees knew they were going to be off for 4 days and, therefore, all the meat from the ''blast'' would have to be packaged. Alleged discriminatees Shirlean Riley and Gloria Graham worked in the box room with approximately 10 other employees. The lead person in the box room was Tonya Bell. The box room is adjacent to, but separate from, the packaging area where another 12 to 15 employees worked. Laura Crawford and Sara Hamm were the lead persons in packaging. The packaging employees included Gladys Locklear and alleged discriminatees Sabrina Baldwin and Marjorie Morgan, who are sisters, Linda Mainor, Barbara Williams, and Willie Mae Purcell.

On November 23, Gladys Locklear received, or had previously obtained, permission to leave at 1 a.m. on the morning of November 24. She did so, clocking out at 1:02 a.m.[6]

On November 23, Shirlean Riley had a transportation problem; she arrived at 4:12 p.m. Before starting work she sought out Supervisor Farmer to whom she explained that her niece, Priscilla King, who also worked at House of Raeford and who normally provided her with a ride to and from work, was out of town. Riley had arranged for Ed Bridgefort to provide her with transportation and he was leaving at 1 a.m. Riley told Farmer that she had to leave at 1 in order to get a ride with Bridgefort to her home in Fayetteville. She acknowledges that Farmer did not give her permission to do this. Rather, Riley announced what she was going to do. Riley worked until 1 a.m. Her timecard reflects that she clocked out at 1:03 a.m.[7]

Gloria Graham, the other employee in the box room, decided that she would leave work at 1 a.m. when she realized that she would have to work late. Graham did not speak with any other employees regarding her personal decision to leave.[8] At some time between 9 and 10 p.m., lead person Bell stated that it looked like the box room employees would be there until about 4:30 a.m. It was at this point that Graham testified that she decided she would leave.[9] Bell ac-

[3] Director of Personnel Erick Wowra testified to this policy in *House of Raeford Farms*, 308 NLRB 568, 573 (1992). In that case two employees, Blackmon and Battle, who left work without permission, were advised that they were terminated after they attempted to return to work. Id. at 575. No violation was found.

[4] Although the Union is the Charging Party, there is no allegation of discrimination because of union activity. On October 21, a majority of Respondent's production and maintenance employees selected the Union as their collective-bargaining representative. The Union was certified on April 26, 1995. *House of Raeford Farms*, 317 NLRB 26 (1995). Thereafter, Respondent and the Union entered into a collective-bargaining agreement.

[5] None of the alleged discriminatees admitted reading the document.

[6] The record does not establish when Locklear received permission to leave. Even though Locklear left pursuant to the permission given to her, the complaint alleges that she engaged in protected concerted activity.

[7] Riley overheard Morgan and Baldwin state that they were leaving at 1 a.m., but this was well after she had told Farmer that she had to leave at 1 because of her transportation situation. Several times in her testimony Riley stated that her 8 hours were over; however, she denied having any conversation with any employees regarding working only 8 hours. She did not mention 8 hours when talking to Farmer.

[8] When asked if she knew why any of the other employees left she replied, ''No. I mean after we left work and we [were] outside there was a discussion, you know, about they [weren't] staying there until 4:30 that morning.''

[9] Graham testified that she told Bell that she could not stay, that she had to leave in order to cook Thanksgiving dinner for her children. She testified that other employees were present when she told this to Bell; however, no witness corroborated this testimony. Bell did not recall any conversation with Graham. Bell testified that, if there had been such a conversation, she would have referred the request to Farmer. Graham acknowledged that she heard nothing from Farmer. Her testimony implies that she believed that, once she told Bell she was leaving, she had permission to leave unless she was told otherwise.

knowledged overhearing a conversation among several employees, including Graham, in which one of the participants, she did not recall who, stated that after 8 hours employees could leave and Respondent could do nothing. This conversation occurred sometime after 11 p.m.; thus, Graham, who made her individual decision to leave before 10 p.m., obviously did not rely upon the statement. She clocked out at between 1:01 and 1:07 a.m.[10]

Barbara Williams discovered that she had a transportation problem sometime during the shift. The person with whom she was to ride, Curtis Lee Haley, learned that he would be getting off early and told Williams that he would wait only until 1 a.m. for her. Williams' transportation complication was the only basis for her decision to leave at 1 a.m.: ''I had no other reason for wanting to leave early that night.'' She did not obtain permission to leave.[11] Williams was the first employee to clock out. She did so at 1:01 a.m.

Willie Mae Purcell, about 11 p.m., asked Crawford about getting off at 1 a.m., explaining that she had company coming. She testified that Crawford told her that it would be okay, but I find this testimony to be mistaken.[12] Crawford recalled that Purcell had said something about wanting to go home and that she, as was her practice, told Purcell to go talk to Farmer. Notwithstanding her alleged request to leave, Purcell testified that she did not have a problem with working overtime that night.[13] She did not testify to any concerted decision to leave work at 1 a.m.[14] Purcell clocked out at 1:03 a.m.

Marjorie Morgan, about 8 p.m., saw four racks of meat going to the ''blast.'' Upon observing this she said, ''Oh, we're going to be here all night.'' Lead person Crawford was standing beside Morgan when she said this. After this, Morgan told her sister, Sabrina Baldwin, that she was going to leave at 1 a.m. She also told Crawford that she was going to leave at 1 a.m. Crawford commented that she was planning to go out of town to visit her daughter. Morgan spoke again with her sister, Baldwin, who, this time, stated that she too was going to leave at 1 a.m.[15] Thereafter Morgan and Baldwin approached Crawford. Baldwin told Crawford that she had heard that employees did not have to work after 8 hours, and asked whether Crawford thought this was true. Crawford replied that she did not know. Baldwin then asked, off the record, what she thought, and Crawford replied, ''That does sound feasible.''[16] At 1 a.m., Morgan told Crawford that her ride was leaving. Crawford told her to talk to Farmer. Morgan entered Farmer's office, told her that she was getting ready to go, that several in the back had walked out, that her ride was going, and she was getting ready to go. Farmer said she was not going to give Morgan permission, if she had to leave, she would have to talk to Coward on Monday, that the ones that walked out would not have a job. Despite Farmer's comments, Morgan left. She was the last of the seven employees to leave, clocking out at 1:07 a.m..

At 11:05 or 11:10 p.m., Baldwin and Morgan came to where Linda Mainor, Locklear, and Williams were working.[17] Baldwin stated that they were leaving at 1 a.m. because they had talked to Crawford who had said that Respondent ''couldn't do [anything] to you.'' Baldwin invited participation, saying that if anybody else wanted to leave, ''we could come or we could stay.'' Mainor responded that they were not going anywhere. Baldwin repeated that they were going to leave, and Mainor said that she would go too. Mainor decided to go because she remembered having to work until 7 a.m. on Christmas Day in 1993, and she did not ''want to go through that again.'' She acknowledged that employees were required ''to stay until we got it done.'' Despite this, she followed those who left at 1 a.m.[18] Mainor and Baldwin both clocked out at 1:02 a.m.

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[10] Graham's timecard could not be located. The time frame is as stipulated by the parties.

[11] I do not credit Williams' claim that she told Crawford that she was leaving at 1 a.m. and that Crawford responded ''as long as we worked our eight hours we could not get wrote up.'' Even if the statement were made, her testimony establishes that it played no part in her decision.

[12] Purcell's prehearing affidavit does not contain such an assertion. If Purcell had actually been given permission to leave, I am certain that she would have brought this to management's attention on Monday, November 28, when she found her timecard missing.

[13] After Purcell left the plant, she heard Baldwin state that Crawford had said that nothing could be done to the employees. Even if she heard this representation before she left, it is clear from her testimony that it played no part in her decision. Purcell appeared to be relying upon the fact that she had no points under the Respondent's attendance policy.

[14] Purcell was asked ''what, if anything, did you all decide to do?'' She replied, ''Well, I had asked Laura [Crawford] about getting off at 1:00.''

[15] I do not credit Baldwin's uncorroborated testimony that, at a break, she, Morgan, Riley, Purcell, and Mainor ''decided we were going to do eight hours and go home.'' Morgan testified that she individually decided she was going to leave and told Baldwin of her intention. Riley had already told Farmer that she was going to leave at 1 a.m. because of her transportation problem. Neither Purcell nor Mainor testified to any conversation in which it was decided that ''we were going to do eight hours and go home.'' I also specifically discredit the testimony of Baldwin, uncorroborated by Morgan, that, at midnight, in Morgan's presence, Crawford ''told us to go ahead and leave so she could go and finish cooking and be with her daughter.'' I am satisfied that Baldwin would have related such a statement when she spoke with Coward and Wowra on Monday, November 28.

[16] I credit Crawford's testimony as to what she said, although I find that she was mistaken regarding whether it was Morgan or Baldwin that raised the issue of the 8-hour rumor with her. Both Morgan and Baldwin agree that it was Baldwin, not Morgan. Crawford's response, ''That does sound feasible,'' is consistent with Morgan's testimony that Baldwin asked a question and Crawford ''implied that nothing could be done.'' Morgan did not corroborate, and I do not credit, Baldwin's testimony that, when asked off the record what would happen if employees left at 1 a.m., Crawford responded that, ''if you all did your eight hours, [there] was nothing they [Respondent] could do.''

[17] General Counsel argues that Purcell and Riley were in this group and that the ''employees decided that they would all leave at 1:00 a.m.'' This argument is not supported by the record. Locklear had permission to leave. Williams testified that the only reason she left was her transportation problem. Although Mainor places Purcell at this conversation, Purcell did not testify to hearing it. There is absolutely no evidence that Purcell relied upon it. Purcell did not hear about Crawford's alleged remarks until after she had left the plant. Riley had informed Farmer prior to beginning work that she was going to leave at 1 a.m.

[18] Mainor testified that, as she passed by Crawford, she commented that, since the others were leaving, she was going to clock out too. Crawford was not paying attention to anyone but Morgan,

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Approximately two thirds of the employees in the box room and packaging area remained. They completed work between 3:45 and 4:15 a.m.

On November 28, Director of Personnel Wowra learned that several employees in further processing had clocked out without permission. He directed that their timecards be taken from the rack. Thereafter he consulted with Director of Further Processing Steve Coward. Consistent with Respondent's past practice, Wowra advised Coward that the employees who left without permission would be considered to have voluntarily quit, and that they would not be permitted to return to work.

When the employees who had left reported to work about 4 p.m., they discovered that their timecards were missing. They gathered in the department office where Coward, Farmer, and First Shift Supervisor Kenneth Scott were present. Coward informed the employees that Respondent considered them to have quit. Initially, all of the employees were talking. When Coward asked them to speak separately, Baldwin assumed the role of spokesperson. She told Coward, in the presence of the other employees, that lead person Laura Crawford had stated that after 8 hours the employees could leave and nothing could be done.[19] Coward repeated that he considered them to have voluntarily quit. After Baldwin spoke, no other employee sought to explain her specific situation to either Coward or Farmer.[20] Thereafter the employees sought out Director of Personnel Erick Wowra. Baldwin repeated what she contended Crawford had said, that after the employees had put in 8 hours, Respondent could do nothing if they left. Wowra stated that he would investigate, that they would not be terminated if they had permission to leave and that, in any event, they could reapply for work after 30 days.[21]

Wowra interviewed Crawford who denied giving permission to leave. His notes of their interview state that ''they told me they were leaving at 1:00 a.m. (after their eight hours). I told them I can't tell you what to do and can't keep you here.''[22] Since Morgan and Baldwin were the only employees who told Crawford they were leaving, the word ''they'' obviously refers to them. Crawford reported no demand; there had been no demand. Wowra determined that the employees had not been given permission to leave. He reported to Company Owner Marvin Johnson that the employees were ''trying to dictate to us when they will or will not work.'' Johnson concurred. Wowra's initial decision terminating the employees remained unchanged.

C. *Analysis and Concluding Findings*

The complaint alleges that the employees concertedly walked out in protest of having to work overtime on a holiday. The record establishes no concerted protest. The majority of the employees individually decided to leave work due to a variety of circumstances. They did so without conversing with any of their fellow workers. There was no demand made upon Respondent for any change in employee hours or working conditions. On November 23 and 24, the only communications with a management official who could grant permission to leave work related to the transportation problems of Riley and Morgan. At no time was there a concerted protest or a demand.

The General Counsel, citing *Advance Cleaning Service*, 274 NLRB 942, 944 fn. 3 (1985), argues that the various reasons given by the employees for leaving are immaterial, that the ''Act is concerned with concerted activity, not concerted thought.'' That principle is valid when the inquiry is into the reasons employees decided to join together in a group action. It is not applicable when, as in this case, the employees did not make common cause with one another. The 1 a.m. departures of Locklear, Riley, Graham, Williams, and Purcell were not the product of concerted activity. Locklear had permission to leave. Riley, prior to starting work, informed Farmer that she was going to leave at 1 a.m. in order to have a ride to Fayetteville. Graham decided, without talking to any other employees, to leave at 1 a.m. in order to cook Thanksgiving dinner. Williams decided to leave after she learned that her ride had gotten off work early and would wait only until 1 a.m. Purcell decided to leave because she had company coming. The fact that their separate, individual decisions placed them at the time clock shortly after 1 a.m. does not convert their separate, individual decisions into concerted activity. Although they acted contemporaneously, they did not act concertedly.

Baldwin and Mainor left work in purported reliance upon Crawford's response after Baldwin questioned her. In so doing, they acted concertedly. Morgan and Baldwin, in seeking an assurance that they would not be disciplined if they left, questioned whether Crawford believed the rumor that employees could not be disciplined if they left work after 8 hours. Crawford replied that she thought it was ''feasible.'' This response obviously did not constitute authorization for Baldwin and Morgan to leave. Furthermore, since Crawford did not have the authority to give permission to leave, her opinion of what would, or would not happen, if they did leave was meaningless.[23] Morgan did not rely upon Crawford's comment; she went to Farmer.[24] Baldwin seized upon Crawford's ''feasible'' response and converted it into a proclamation that ''if you all did your eight hours [there] was nothing they [the Company] could do.'' After hearing

who she was following to Farmer's office. Assuming Mainor made the comment, I find that Crawford did not hear it.

[19] Mainor testified that Baldwin was not the spokesperson, she was just the one who spoke.

[20] Baldwin did not assert to Coward that Crawford ''told us to go ahead and leave.'' Graham did not argue that she believed she had permission to leave since, after allegedly telling lead person Bell that she intended to leave, she heard nothing else. Purcell did not point out that she allegedly sought permission to leave from Crawford and that Crawford said ''okay.'' The failure of these employees to specifically discuss their individual situations, either on November 28 or at any later time, further confirms my findings that these purported permissions were not given.

[21] Wowra's comment about reapplying in 30 days was disingenuous since the files of employees who walk off the job are marked ''do not rehire.''

[22] Wowra's notes of Crawford's comments are not inconsistent with the conversation with Morgan and Baldwin in which she made the ''feasible'' response to which she testified.

[23] In view of her limited authority, it is immaterial whether Crawford was, or was not, a statutory supervisor.

[24] Morgan ceased to act in concert with Baldwin and Mainor when she went to Farmer. Farmer specifically refused permission for Morgan to leave. Morgan made no demand for a change in working conditions or the criteria for excusing an employee due to alleged transportation problems. She simply left.

Baldwin's remarks, Mainor decided to leave. Mainor's reliance upon Baldwin's misstatement of Crawford's response, although concerted, was not protected. These employees did not seek or demand a change in working conditions. They were seeking to leave work because they wanted to, while at the same time avoiding the consequences of their action.

Respondent, on November 24, had no reason to believe that any employees were engaged in concerted activity. Riley had told Farmer, before beginning work, that she was leaving due to a transportation problem. Morgan told Farmer that several in the back had walked out, that her ride was going, and she was getting ready to go. She did not report Baldwin's repetition of Crawford's alleged remarks. She did not indicate in any way that the employees were acting concertedly when she spoke to Farmer.

Respondent, on November 28, was not confronted with a concerted protest regarding overtime policies. Indeed, there was no claim that the employees had, on November 24, been concertedly protesting anything. Rather, after the employees were told that Respondent considered them to have voluntarily quit, they asserted, through Baldwin, that Respondent should not impose discipline upon them because they had been told by Crawford that, after working 8 hours, they could leave and nothing could be done.[25] Even though this statement was not true, no employee disputed that statement or, thereafter, sought to approach management with her individual situation.[26] Since none of the seven alleged discriminatees asserted that her situation was different, or that she had not relied upon Crawford's alleged statement, Respondent had no reason to contact the individual employees.[27]

Crawford had not told the employees that they could leave and that nothing could be done to them. She had only stated, in response to Baldwin's question, that the rumor sounded ''feasible.'' When Wowra spoke with Crawford she told him that she had not given the employees permission to leave, that ''they told me they were leaving at 1:00 [after their 8 hours]. I told them I can't tell you what to do and can't keep you here.'' Crawford reported no concerted demand because there had been no demand.

Baldwin claimed that Crawford had told the employees they could leave. Wowra's investigation revealed that this was not true. Crawford's report to him, that ''they told me they were leaving at 1:00 [after their 8 hours],'' suggested that the employees may have acted concertedly, although actually only Baldwin and Mainor had actually acted in concert.[28] Whether the employees had left concertedly became inconsequential when Wowra learned from Crawford that the employees left pursuant to the claim that they only had to work 8 hours.[29] Respondent had already addressed the rumor regarding that claim by posting the document confirming that an employer could require more than 8 hours of work from employees. Wowra concluded that the employees were ''trying to dictate to us when they will or will not work.'' Consistent with its past practice, Respondent determined that it would continue to follow its established policy that treats employees who leave the plant without permission as having voluntarily quit.

The General Counsel argues that the employees, by their conduct, ''in effect protested against Respondent's imposition of overtime.'' I disagree. The employees, by their conduct, whether individually, or concertedly on the part of Baldwin and Mainor, ignored an established work requirement and sought to establish their own terms and conditions of employment. They simply left work when they wanted to and then sought to avoid the consequences of their action.[30] No demand was articulated. Even after the employees were told that Respondent considered them to have voluntarily quit, they made no demand. Rather, they sought to avoid the consequences of their actions by relying upon Baldwin's erroneous claim that Crawford had told them that they could leave and that nothing could be done to them.

It is well established that Section 7 of the Act protects concerted activities ''whether they take place before, after, or at the same time'' a demand is made. *NLRB v. Washington Aluminum Co.*, 370 U.S. 9, 14 (1962). Nevertheless, Washington Aluminum assumes, at some point, the presence of a demand to which an employer can respond. ''Concerted activities, to be protected, must be a means to an end, not an end in themselves.''[31] In the instant case the walkout was concerted on the part of Baldwin and Mainor; however, there was no articulation of any demand for a change in any term or condition of employment before the walkout, at the time of the walkout, after the walkout, or when the employees were told that Respondent considered them to have voluntarily quit.[32]

[25] This claim that the employees were authorized to leave is inconsistent with a claim of protected concerted activity. If the employees left with permission, concertedly or otherwise, they would not have been protesting anything.

[26] In actuality, only Mainor, who decided to leave after Baldwin incorrectly reported that Crawford had stated they ''couldn't do [anything] to us,'' relied upon that statement.

[27] Locklear did not testify. The record does not reflect when or how the Respondent learned that she had been given permission to leave.

[28] Morgan left after individually being denied permission to leave by Farmer.

[29] Insofar as the employees were acting upon the rumor that Respondent could not require them to work more than 8 hours, and in view of the absence of any demand for any change in Respondent's policies, Respondent had no assurance that the conduct would not recur. See *J. P. Hamer Lumber Co.*, 241 NLRB 613, 619 (1979), distinguishing *John S. Swift Co.*, 124 NLRB 394 (1959).

[30] There had been no change in Respondent's overtime policies. Thus this case is unlike *Mike Yurosek & Son, Inc.*, 310 NLRB 831 (1993), in which the employees had concertedly protested the respondent's cut in their hours, stating that they would not have enough time to finish their work. The Board had remanded that case to determine whether the employees were protesting the reduction in hours, the direction that they work an extra hour, or a combination of the two. The administrative law judge found that they were protesting the direction to work the extra hour. Id. at 834. The employees in the instant case were not protesting anything. They were asserting that they could not be disciplined.

[31] *NLRB V. Marsden*, 701 F.2d 238, 242 (2d Cir. 1983).

[32] The General Counsel cites several cases involving concerted refusals to perform overtime including *Schultz, Snyder & Steele Lumber Co.*, 198 NLRB 431, 434 (1972), in which the employees gathered together and stated the reasons for their disagreement with the respondent's assignment of additional overtime, *Smithfield Packing Co.*, 258 NLRB 261, 263 (1981), in which the employees made common cause to protest their employer's failure to keep its commitment to limit Sunday work to 8 hours, and *Chelsea Homes, Inc.*, 298

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Employees who simply decide to start a holiday early are not engaged in protected activity. In *Scioto Coca-Cola Bottling Co.*, 251 NLRB 766 (1980), several employees left work on September 1, the last work day before the Labor Day holiday. There was no evidence establishing why they did so. In finding no violation of the Act, the Board commented that the reason the employees left could have been because they were dissatisfied with the ongoing contract negotiations, which would have been protected, or ''because they wanted to start the Labor Day holiday early, which would not be protected by the Act.'' Id. at 767. The record in the instant case confirms that the employees, for a variety of reasons, wanted to start the Thanksgiving holiday early, i.e., to set their own terms and conditions of employment.

The facts herein are even more compelling than *Bird Engineering*, 270 NLRB 1415 (1984), in which the employees had specifically verbally protested a new rule prohibiting them from leaving the plant during lunch break. Thereafter several employees concertedly left the facility at lunch break. They were discharged. The Board held that their actions in ''defiance of the Respondent's authority left the Respondent with little choice but to take the disciplinary action it had announced.'' Id. at 1416. The Board noted that the employees did not engage in a work stoppage, rather they ''attempted to have it both ways—avoiding the involvement in a labor dispute and deciding for themselves which rules to follow and which to ignore.'' Id. at fn. 3. In the instant case there was no change in rules. Employees were aware that on the eve of a holiday they were required to package everything coming from the ''blast.'' They were also aware that permission was required to leave the plant and that Farmer was the only individual who had authority to grant that permission. Riley announced to Farmer that she was leaving before beginning work. Morgan, at 1 a.m. told Farmer that she was leaving, and Farmer told her of the consequences of her action. The other employees simply left. There was no demand, there was no protest. The employees simply chose to ignore Respondent's requirement that work be completed.

These employees did not contend that they had been engaged in a strike.[33] They were not seeking to change anything. They made no demand for any change. The only claim they made, through Baldwin, was that Crawford purportedly told them that they could leave and that nothing could be done, an assertion that was not correct. By their action, the employees were individually deciding whether to work more than 8 hours. The employees left without permission. Consistent with its past practice, Respondent followed its established policy that treats employees who leave the plant without permission as having voluntarily quit. In so doing, Respondent did not discriminate against the employees because they engaged in protected concerted activity. The employees' activity, even if concerted, was not protected. These employees, as in *Bird Engineering*, were ''attempting to determine for themselves which terms and conditions of employment they would observe.'' Ibid. I find that such conduct is not protected by the Act.

CONCLUSIONS OF LAW

The Respondent has not violated Section 8(a)(1) of the Act as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[34]

ORDER

The complaint is dismissed.

NLRB 813, 831 (1990), in which the employees notified management of their intended action. I find these cases inapposite. No demand relating to overtime was made in the instant case. The only contention, made after the employees were told that they were considered to have voluntarily quit, was that Respondent should not, or could not, discipline them.

[33] See *Interlink Cable Systems*, 285 NLRB 304, 308 (1987), in which it was noted that the employees never spoke of a strike or work stoppage.

[34] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.